

BEFORE THE STATE ENGINEER OF THE STATE OF UTAH

IN THE MATTER OF CHANGE APPLICATION)
)
NUMBER 25-3464 (a23089))

MEMORANDUM DECISION

Change Application Number 25-3464 (a23089), in the name of Hammer Canal Co., was filed on March 16, 1999, to change the Point of diversion, Place of use, and Nature of use of 3.0 cfs of water. Heretofore, the water has been diverted from 11 springs and Summit Creek at points located (1)North 1775 feet and East 35 feet, (2)North 1845 feet and West 565 feet, (3)North 1710 feet and West 790 feet, (4)North 1735 feet and West 690 feet, (5)North 1580 feet and West 660 feet, all from the S $\frac{1}{4}$ Corner, (6)North 1595 feet and West 1425 feet, (7)North 1405 feet and West 945 feet, (8)North 1340 feet and East 1375 feet, all from the SW Corner, (9)North 1250 feet and East 1025 feet from the S $\frac{1}{4}$ Corner, (10)North 1165 feet and East 1595 feet, (11)North 640 feet and East 625 feet, both from the SW Corner, (12)North 1770 feet and West 925 feet from the S $\frac{1}{4}$ Corner, all of Section 29, T13N, R1E, SLB&M, and used for the irrigation of 78.70 acres from April 1 to October 31, and the stockwatering of 200 cattle or equivalent in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 29; SE $\frac{1}{4}$ SW $\frac{1}{4}$, S $\frac{1}{2}$ SE $\frac{1}{4}$ Section 30; N $\frac{1}{2}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 31, T13N, R1E, SLB&M.

Hereafter, it is proposed to divert 3.0 cfs of water from the same points as heretofore and adding a point on Summit Creek located North 850 feet and East 270 feet from the S $\frac{1}{4}$ Corner of Section 30, T13N, R1E, SLB&M to be used as heretofore.

The application was advertised in The Herald Journal on April 1 and 8, 1999, and was protested by PacifiCorp. A hearing was held on June 15, 1999, in Logan, Utah.

Marlin Toombs represented the applicant and stated the necessity of moving a point of diversion in the creek to facilitate better and more convenient methods to irrigate his land. He indicated that the change would primarily water his own land area of approximately 27 acres. No new acreage is involved. The applicant's information appears to address the concerns of the protestant.

It is, therefore, ORDERED and Change Application Number 25-3464 (a23089) is hereby APPROVED subject to prior rights and the following conditions:

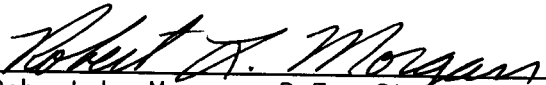
1. The applicant is limited to withdraw only 0.5 cfs from Summit Creek (also known as Smithfield Creek.) The remainder of Hammer Canal Water will be diverted from the springs as this is the same diversion ratio as historically described in the underlying rights.
2. The applicant is required to file a stream channel alteration and receive approval from the State Engineer before any work is done to the cross section of Summit Creek under this change application.

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3. The points of diversion on Summit Creek associated with this water right are hereby included in the Summit Creek Distribution System.
4. In accordance with Utah Code Annotated, Section 73-5-4, the applicant is required to install a substantial control valve on the diversion works which can be locked by the commissioner and to construct or install a measuring device which will accurately measure the water discharging from the diversion. The control valve and measuring device must be of a design approved by the State Engineer.
5. The State Engineer will not certificate the water right unless the conditions of approval have been acceptably met and noted in the information provided by the proof engineer and applicant.

This Decision is subject to the provisions of Rule R655-6-17 of the Division of Water Rights and to Sections 63-46b-13 and 73-3-14 of the Utah Code Annotated, 1953, which provide for filing either a Request for Reconsideration with the State Engineer or an appeal with the appropriate District Court. A Request for Reconsideration must be filed with the State Engineer within 20 days of the date of this Decision. However, a Request for Reconsideration is not a prerequisite to filing a court appeal. A court appeal must be filed within 30 days after the date of this Decision, or if a Request for Reconsideration has been filed, within 30 days after the date the Request for Reconsideration is denied. A Request for Reconsideration is considered denied when no action is taken 20 days after the Request is filed.

Dated this 14th day of January, 2000.


Robert L. Morgan, P.E., State Engineer

RLM:jmj:et

Mailed a copy of the foregoing Memorandum Decision this 14th day of January, 2000, to:

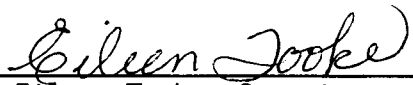
Hammer Canal Co.
c/o Marlin Toombs
140 North 400 West
Logan, UT 84321

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PacifiCorp
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Salt Lake City, UT, UT 84101

Summit Creek Commissioner
Lori Meeker
520 North 320 East
Logan, UT 84321

Lee Sim, Assistant State Engineer
for Distribution

BY: 
Eileen Tooke, Secretary